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RECENT STATE CONSTITUTIONS.[1]

ONE of the most marked features of all recent State constitutions is the distrust shown of the Legislature. The four constitutions we are examining afford further illustration of this increasing tendency. Professor Thorpe, in his paper before referred to, on the constitutions of North and South Dakota, Montana, and Washington, finds that the principal prohibitions on the Legislature are: on enacting any private or special legislation; on extinguishing or releasing the obligations of corporations or of individuals to the State; on legislative bribery; on personal or private interest in a bill, in any member; on irregular form in framing bills; on appropriations of money; on performing legislative functions by deputy; on loaning the credit of the State to corporations; and on authorizing or entertaining money bills during the last hours of the Legislature. In the four constitutions now under examination these restrictions are, if anything, yet more marked.

Mississippi (sec. 87) provides in general that no special or local law shall be enacted for the benefit of individuals or corporations in cases which are or can be provided for by a general law, or when the relief sought can be given by any court of the State; nor shall the operation of any general law be suspended for the benefit of any individual or private corporation or association; and in all

[1] Continued from the May number of the Harvard Law Review.

cases where a general law can be made applicable, and would be advantageous, no special law shall be enacted.

So in Kentucky (sec. 62), thirtieth, it is provided, in addition to the twenty-nine special prohibitions alluded to below, that where a general law can be made applicable, no special law shall be enacted. And in Wyoming (Art. III. end of sec. 27) there is the same clause.

But who is to see to it that this rule shall be followed? Who is to be the judge whether a general law is feasible? Would not the Supreme Court decide that this is for the Legislature to determine, and that the fact that they had passed a special law in some new case was sufficient evidence that a general law could not be made applicable? Even supposing some palpable case in which the Legislature passed a special law, where obviously a general law would do, it would require a Supreme Court of uncommonly strong calibre to decide such a special law to be unconstitutional and void.

To guard against this danger of passing special laws, it is also provided in Mississippi (sec. 89) that no local or private bill shall be passed by either House until it shall have been referred to a standing committee on local and private legislation, and shall have been reported back with a recommendation in writing that it pass, stating affirmatively the reasons therefor, and why the end to be accomplished could not be reached by a general law or by a proceeding in court; or if the recommendation of the committee be that the bill do not pass, then it shall not pass the House to which it is so reported, unless it be voted for by a majority of all the members elected thereto. If, however, it be so passed (unless on some subject prohibited), the courts shall not, because of its local, special, or private nature, refuse to enforce it. So in this State, at least, the power of the courts is specially curtailed in this regard; that is to say, the convention, after taking most minute pains to guard against abuse of power by the Legislature, has expressly denied to the courts the power to declare this class of legislation unconstitutional! In the constitutions of Kentucky, Idaho, and Wyoming no provision is made on this subject.

Each constitution, moreover, contains a long list (Miss., sec. 90; Ky., sec. 62; Idaho, Art. III. sec. 19; Wy., Art. III. sec. 27) of subjects in regard to which the Legislature is prohibited, absolutely and without any qualification, from passing special laws. It would take too much space to summarize this list at length, though

it is hardly possible in any other way to give an adequate idea of the petty restrictions by which the Legislature is bound and obstructed, hand and foot. But some conception may be gained from the following characteristic examples. In three or more of the four States special laws are absolutely forbidden,—

1. Regulating the practice in courts of justice; [1] providing for change of venue in civil or criminal causes; limiting civil or criminal actions; regulating the punishment of crimes, or remitting fines; or drawing grand or petit juries.

2. Exempting property from taxation; or refunding money legally paid into the State Treasury.[2]

3. Restoring to citizenship persons convicted of infamous crimes; removing the disability of infancy; providing for the adoption or legitimation of children; changing the law of descent, succession, or distribution; granting divorces; changing the names of persons; [3] giving effect to invalid deeds or wills; [4] or any legislation in regard to the estates of deceased persons, minors, or *cestuis que trustent.*

4. Regulating the rate of interest on money, or authorizing the creation, extension, or impairment of liens.

5. Granting the right to lay railroad tracks,[5] or providing for the support of any private school.

6. Laying out or vacating highways,or licensing ferries, bridges, or toll-roads.[6]

7. Changing the emoluments of any public officer.[7]

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[1] Or changing the rules of evidence in any trial (Wyoming).

[2] So, also, in regard to releasing the indebtedness or liability of any person or corporation, or extending the time for the collection of taxes (Idaho and Wyoming); or legalizing, as against the State, the invalid act of any officer (Idaho).

[3] Or of places either (Idaho and Wyoming).

[4] Or legalizing, except as against the State, the invalid act of any officer, etc. (Kentucky).

[5] So, also, granting lands under the control of the State to any person or corporation, or conferring power to exercise the right of eminent domain (Mississippi); granting or amending any charter (Kentucky and Idaho); granting charters to banks, insurance companies, or loan and trust companies (Wyoming).

[6] Similarly, in Kentucky, special laws are forbidden declaring streams navigable, authorizing the construction of booms or dams, or the removal of obstructions, or providing for the protection of game and fish, or regulating fencing and the running at large of stock.

[7] The following, though occurring in less than three of the constitutions, are amusing or interesting enough to be worth notice. In Kentucky the Legislature cannot apply "local option" to a special place or pass special laws to regulate "labor, trade, mining, or manufacturing." Changing the boundaries of wards is a forbidden subject

Even rules of procedure for the Legislature are drawn into these constitutions; how minutely in one case may be seen from the following summary of the provisions in Mississippi. The other States are not carried by distrust of their representatives to quite the same extreme. It is provided in Mississippi (sec. 55) that the yeas and nays shall be entered on the journal on the final passage of every bill. (Sec. 59) Every bill shall be read in full immediately before the vote on its final passage, and having passed both Houses, shall be signed by the President of the Senate and the Speaker in open session. Before either shall sign any bill, he shall give notice thereof, suspend all business, have the bill read by its title, and on the demand of any member, have it read in full, and all such proceedings shall be entered on the journal.[1] (Sec. 60) No bill shall be so amended in its passage through either House as to change its original purpose;[2] and no law shall be passed except by bill.[3] (Sec. 61) No law shall be revived or amended by reference to its title only, but shall be inserted at length.[4] (Sec. 62) No amendments to bills by one House shall be concurred in by the other, except by a vote of a majority thereof, taken by yeas and nays, with the names of those voting for and against, recorded upon the journals. Reports of committees of conference shall be adopted in each House in the same way. (Sec. 63) No appropriation bill shall be passed by the Legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury. (See 64) No appropriation bill shall continue in force more than six months after the meeting of the Legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all the members elected to each House.[5] (Sec. 65) All votes on the final passage of any measure shall be subject to reconsideration for at least one whole legislative day, and no motion to reconsider such vote shall be disposed of adversely on the day on which the

in Kentucky and Idaho; changing or locating a county seat in Kentucky; "regulating township or county affairs," in Idaho and Wyoming; incorporating cities, towns, or villages, or amending their charters, in Wyoming; and in Mississippi, exempting any person from jury, *road*, or other civil duty!

[1] Compare Idaho, Art. III. sec. 15; Wyoming, Art. III. secs. 25, 28, 41; and Mississippi, sec. 72.

[2] So Wyoming, Art. III. sec. 20.

[3] So Idaho, Art. III. sec. 15, and Wyoming, Art. III. sec. 20.

[4] So Kentucky, sec 53; Idaho, Art. III. sec. 18; and Wyoming, Art. III. sec. 26.

[5] The latter provision is also found in Kentucky, sec. 48.

original vote was taken, except on the last day of the session. (Sec. 66) No law granting a donation or gratuity in favor of any person or object shall be enacted, except by the concurrence of two-thirds of each branch of the Legislature; nor, by any vote, for a sectarian purpose or use. (Sec. 67) No new bill shall be introduced into either House during the last three days of the session.[1] (Sec. 68) No appropriation and revenue bills shall be passed during the last five days of the session. (Sec. 69) General appropriation bills shall contain only appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments, to pay interest on State bonds, and to support common schools. All other appropriations shall be by separate bills, each embracing but one subject. Legislation shall not be engrafted on appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid. (Sec. 70) No revenue bill nor any bill assessing property for taxation shall become a law except by a vote of at least three-fifths of the members of each House present and voting. (Sec. 71) Every bill shall have a title which ought to indicate clearly the subject-matter of the proposed legislation.[2] Each committee to which a bill may be referred shall express in writing its judgment of the sufficiency of the title of the bill, and this too whether the recommendation be that the bill do pass, or do not pass. (Sec. 73) No bill shall become a law until it shall have been referred to a committee of each House, and returned therefrom with a recommendation in writing.[3]

Idaho (Art. III. sec. 12) even goes so far as to direct that the business of each House and of the committee of the whole shall be transacted openly, and not in secret session. The provision in Wyoming (Art. III. sec. 14) to the same effect is not so imperative, for it makes an exception if "the business is such as requires

[1] In Wyoming, five days; with an exception in favor of bills for the expenses of the government, and a provision that this rule may be suspended by unanimous consent.

[2] In Kentucky, sec. 53, and Idaho, Art. III. sec. 60, no law shall relate to more than one subject, which shall be expressed in the title, with the addition in the latter State that if this provision be not complied with, only so much of any Act as shall not be embraced in the title shall be void. So in Wyoming, Art. III. sec. 24; but general appropriation bills and bills for the codification and general revision of the laws are exempt from the necessity of stating the subject in the title.

[3] In Kentucky, sec. 48, it is provided that no bill shall be considered for final passage unless reported by a committee and printed for the use of the members. So in Wyoming, Art. III. sec. 23. But in Kentucky if a committee fails to report a bill within a reasonable time, any member may call it up, and by consent it may be considered as if reported.

secrecy," with no restriction, however, upon the exercise of the power of declaring whether the business is such as really requires secrecy.

In Kentucky (sec. 57) no Act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when by the concurrence of a majority of the members elected to each House, by a yea and nay vote entered upon their journals, an Act may become a law when approved by the Governor; "but the reasons for the emergency that justifies this action must be set out at length in the journal of each House."

This is plainly insufficient, for there is no provision made that the Supreme Court can pass upon the question whether the emergency was real. In the absence of such a provision, no court would undertake to pass upon such a question, but would declare the Legislature to be the sole judge of the question. If it is necessary to place such restrictions upon the power of the Legislature, and then to enlarge its powers in case of "emergency," it would seem to be equally necessary to guard against abuse of this enlargement by giving power to the Supreme Court to declare an Act unconstitutional and void, when the emergency under pretext of which the Act was passed was not real. There is a similar defect in the constitution of Idaho, in regard to the provision there adopted (Art. III. sec. 22): — that, except in case of "emergency," which shall be declared in either the preamble or body of the Act, no law shall take effect until sixty days from the end of the session at which it was passed.

Further evidence of the apprehension that the Legislature may go wrong is afforded by section 121 in Mississippi, which provides that when convened in extraordinary session, by public proclamation of the Governor, the Legislature shall have no power to consider or act upon anything not designated in the proclamation, or submitted to them in writing by the Governor, except impeachments and examination into the accounts of State officers. In Kentucky (sec. 83) and Idaho (Art. IV. sec. 9) there are similar limitations.

In Idaho (Art. III. sec. 10) it is provided that, a quorum being in attendance, if either House fail to effect an organization within the first four days thereafter, the members of the House so failing shall be entitled to no compensation from the end of the said four days until an organization shall have been effected.

Kentucky (sec. 44) and Idaho (Art. III. sec. 23) provide in their constitutions a fixed compensation for the members of their Legislatures (five dollars a day and mileage). Kentucky wisely allows this to be changed by law (but no change shall take effect during the session at which such change is made; and sessions are limited to sixty days, except the first session). Wyoming (Art. III. sec. 6) fixes the compensation of the first Legislature (five dollars a day and mileage). No session after the first, which may be sixty days, shall exceed forty days. After the first session the compensation of members shall be as provided by law; but no Legislature shall fix its own compensation. Mississippi (sec. 46) leaves the compensation to be prescribed by law; but no alteration can take effect during the session at which it is made.

Idaho (Art. III. sec. 23) provides that whenever any member of the Legislature shall travel on a free pass in coming to or returning from the session of the Legislature, the number of miles actually travelled on such pass shall be deducted from the mileage of such member. Mississippi (sec. 188) forbids railroads or other transportation companies granting passes or tickets free, or at a discount, to members of the Legislature, or to any State, district, county, or municipal officers, except Railroad Commissioners. Kentucky (sec. 205) still more stringently provides that no common carrier, under heavy penalty, to be affixed by the General Assembly, shall give any free passes, or sell tickets at reduced rates not common to the public, to any State, district, city, town, or county officer, or member of the General Assembly, or judge. Any such person who shall accept the above shall forfeit his office.

Finally, the following scattered restrictions are worth notice, in addition to those mentioned by Professor Thorpe (see above) as common to the four constitutions discussed by him:—

In Mississippi (sec. 99), the Legislature shall not elect any other than its own officers, the State Librarian, and United States Senators, but it may appoint Presidential Electors. (Sec. 100) No obligation or liability due the State, levee board, county, city, or town shall ever be remitted, released, postponed, or diminished, etc. (but doubtful claims may be compromised). (Sec. 92) The Legislature shall not authorize the payment to any person of the salary of a deceased officer beyond the time of his death; nor (sec. 93) shall it retire an officer on pay or part pay, or make any grant to him. (Sec. 96) The Legislature shall never grant extra

compensation, fee, or allowance to any public officer, agent, servant, or contractor, after service rendered or contract made; nor authorize payment, or part payment, of any claim under any contract not authorized by law; nor (sec. 95) shall lands belonging to the State ever be donated, directly or indirectly, to private corporations or individuals, or to railroad companies; nor sold to corporations or associations for a less price than to individuals.

We are reminded of the anecdote of the Irish groom who confessed to his priest he had fed the horses on wooden oats. He was reproached for it by his father confessor, who asked him where he had learned such wickedness; and his answer was that he never had heard of it until he had been asked by this same father, at some preceding confession, whether he had ever done it!

In the new constitution of Kentucky, also, further vexatious restrictions upon the power of the Legislature are to be found. Sec. 46 provides that no senator or representative shall, during the term for which he was elected, or for one year thereafter, be appointed or elected to any civil office of profit in the State which shall have been created, or the emoluments of which shall have been increased, during his term, except to such offices as are filled by the election of the people. Sec. 47 provides that no person who at any time may have been a collector of public moneys for the State, or for any county, city, town, or district, shall be eligible to the General Assembly, unless he shall have obtained a quietus six months before the election.

Debts contracted by the General Assembly to meet casual deficits in the revenue shall not exceed five hundred thousand dollars, and the money arising from such loans shall be applied only to the purposes for which they were obtained, or to repay such debts; but the General Assembly may contract debts to repel invasion, suppress insurrection, etc. (sec. 51).

In any Act to create a debt (except those last provided for), provision shall also be made for the levy and collection of an annual tax to pay the interest stipulated, and to discharge the principal within thirty years; and such an Act shall not take effect until after submission to the people at a general election; but the General Assembly may contract debts by borrowing money to pay any part of the State debts, without submission to the people and without provision for a tax to discharge such debt or the interest thereon (sec. 52). Sec. 61 in Kentucky provides that the Legislature shall neither audit nor allow any private claim or account against the

State. One is tempted to inquire whether this convention expected the State Legislature to consist of fools and knaves.

A noticeable prohibition in Mississippi is to be found in sec. 98. "No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the Legislature shall provide by law for the enforcement of this provision; nor shall any lottery heretofore authorized be permitted to be drawn or its tickets sold." So in Idaho (Art. III. sec. 20) the Legislature is forbidden to authorize any lottery or gift enterprise. So in Kentucky (sec. 235).

Passing now to a comparison of the powers and duties of the Executive in these four States, we find here also the same disposition towards minute and often petty limitations.

In Mississippi (sec. 116), Kentucky (sec. 72), and Wyoming (Art. IV. sec. 1), the Governor shall hold his office for the term of four years; in Idaho (Art. IV. sec. 7), for two years. The longer term would seem to be preferable on many accounts. If he holds his office no longer than the Legislature, and is elected at the same time, any sudden change of feeling by the voters may change the Legislature and the Executive at the same time, which would tend to a departure from stability of administration. In Kentucky (sec. 73) and Mississippi (sec. 116) he is ineligible for the succeeding four years after the expiration of his term of office, —a mark of the fear entertained that a Governor would become too powerful if allowed to be immediately re-elected.

We will not dwell upon the usual powers given to the Governor in these four constitutions, since our object is not to give a full account of them, but rather to point out wherein recent constitutions depart from the older ones, and to consider the causes and effects of such departures.

The usual power of veto is given to the Governor in Mississippi (sec. 73). In addition, he may veto parts of any appropriation bill, and approve parts. So in Idaho (Art. IV. sec. 11), and in Wyoming (Art. IV. sec. 9). None of these four States, however, follow the examples of Washington and Montana, in giving the power to the Governor to veto parts of any bill.

Elaborate provisions had been made in many recent constitutions for a board of pardons; as, for instance, in South Dakota and Montana. So, in Idaho (Art. IV. sect. 7), such a board is created, to consist of the Governor, Secretary of State, and Attorney-General. This board — or, in Wyoming (Art. IV. sec. 5),

and also in Mississippi (sec. 124), and in Kentucky (sec. 80), the Governor alone — may remit fines and forfeitures and grant reprieves and pardons (except in cases of treason or impeachment). The curious provision that no pardon shall be granted before conviction is common to Mississippi, Wyoming, and Idaho. The question naturally arises: Before conviction what is there to pardon? In Mississippi it is provided that in cases of felony, after conviction, no pardon shall be granted until the applicant shall have published for thirty days, in some newspaper in the county where the crime was committed, etc., his petition for pardon, setting forth the reasons why it should be granted. In Kentucky, the Governor shall file with each application for pardon a statement of the reasons for his decision thereon, and both application and statement shall always be open to public inspection. So in Idaho (Art. IV. sec 7), the Board of Pardons shall advertise hearings upon applications for pardon, and shall reduce their proceedings and decisions to writing, with their reasons for their action in each case, and the dissent of any member; all to be filed in the office of the Secretary of State. In Wyoming (Art. IV. sec. 5) the Legislature may pardon, commute the sentence, direct its execution, or grant further reprieve after a reprieve by the Governor, in cases of conviction for treason; and the Governor shall communicate to the Legislature, at each regular session, each case of remission of fine, reprieve, commutation, or pardon granted by him, with full details as specified, and his reasons. All these minute provisions may be necessary to prevent the abuse of the so-called power of pardon, but they also show the apprehensions felt lest the Governor be not a man to be trusted.

Another striking evidence of the same fear is to be found in the provisions concerning bribery of or by the Governor, in the four constitutions we are examining.

Wyoming (Art. IV. sec. 10) follows the example of North and South Dakota by guarding in the constitution against bribery of the Governor or bribery by him. Why encumber a constitution with such details of legislation? For of course a statute of the Legislature will provide for all cases of bribery. And it may well be doubted whether such deep-seated corruption can be prevented by constitutional or legislative inhibition. If the Chief Executives of our States are to be men open to receive or give bribes, the remedy would seem to be, not provision against it by constitution or statute, but the awakening of the moral sense of the people.

In the older constitutions the administrative officers were appointed by the Executive, and this still continues to be done in some States. In the next period of constitution-making they were elected by the Legislature. But in the latest constitutions (Kentucky, sec. 94; Wyoming, Art. IV. sec. 11; Idaho, Art. IV. sec. 2; and Mississippi, secs. 128, 133, 134, and 143), following the example of North Dakota, South Dakota, Montana, and Washington, they are all elected by the people. Such a uniform system, common to the last eight new constitutions, is noteworthy, and indicative of the continued growth of democracy. It is the better view of political students that the administration of the business of the State should be managed more like the business of corporations not in politics; that the tenure of office of the principal State officers should be subject to change when the Governor is changed by the vote of the electors, but that subordinate officers should remain in office during good behavior; and that all such officers should be, subject to these principles, under the control of the Governor, who, in turn, should then be held to a strict accountability by the electors for the way in which he manages the affairs of the State. In this way only can the Executive be made an equal and co-ordinate department of the government, and thus become an object for the ambition of a higher class of men than at present. But obviously such is not the trend of the development of constitution-making. More than ever, the people are taking on themselves the burden of governing the State. Let us hope that general public education, the spread of a higher morality with the increase of civilization, will more and more fit them to succeed in their undertaking.

These four constitutions follow the usual course of older ones with regard to the judicial department, in providing one Supreme Court not subject to the powers of the Legislature, and subordinate courts, some of which, more especially the lower ones, are subject to change by the Legislature. In Mississippi (sec. 145), the Governor, by and with the advice and consent of the Senate, appoints the judges of the Supreme Court, and (sec. 153) the judges of the Circuit and Chancery Courts also. In Kentucky (sec. 121), the judges of the Court of Appeals are elected by districts. In Wyoming (Art. V. sec. 4) and in Idaho (Art. V. sec. 6) they are elected by the people at large,—thus furnishing further evidence of the growth of democracy. It must be admitted that under a system of elective judges the result is much better than

might be anticipated. Still, it is a crying evil that under such a system, as in New York, the judges are expected to contribute liberally to campaign funds.

In Kentucky (sec. 117) the Governor may remove the judges of the Court of Appeals, the highest court in the State, "for any reasonable cause," upon the address of two thirds of each House, the cause to be set forth in the address and the journal of each House. There is no provision made here for any investigation of the charge, and no opportunity given to the accused judge to defend himself. In every particular this mode of removing a judge is inferior to the usual mode of trial by impeachment. This constitution (sec. 141) also contains a most unusual provision, forbidding the establishment of any courts save those there provided. It is difficult to see any reason for this inhibition.

Idaho (Art. V. sec. 1) abolishes the distinction between actions at law and suits in equity, and prohibits any distinction in form between actions and suits. One form of action, it is declared, shall include the enforcement or protection of private rights, and the redress of private wrongs. A more radical change can hardly be conceived than is made in these few words; and the development of a new system of procedure thereunder will be watched with interest.

Under section 17 of the same article no judge of the Supreme Court or District Court shall be paid his salary or any part thereof unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination thirty days prior to this oath. The intention is praiseworthy, but the manner chosen to carry it into effect is hardly consistent with the dignity of a judge's position.

Of all men in the community judges seem to have the best opportunity of becoming acquainted with the deficiences of the law; and, removed from partisanship, their recommendations would naturally be both impartial and of practical value. Idaho (Art. V. sec. 25) recognizes this possibility by providing that the judges of the District Courts shall annually, on or before July 1, report in writing to the Justices of the Supreme Court such defects and omissions in the laws as their knowledge and experience may suggest; and that the Justices of the Supreme Court shall annually, on or before December 1, report in writing to the Governor — the report to be by him transmitted to the Legislature with his message — such defects and omissions both in the Constitution and in the laws as

they may find to exist. They should also have been directed to suggest a remedy.

Enough of these constitutions has been quoted to show their manifest faults, their verbosity, and their omissions. They all err in incorporating into the organic law matter that should have been left for legislation. In an admirable article on the subject of Constitutional Prohibition, published March 9, 1889, in the "Cambridge Tribune," Professor Thayer of the Harvard Law School wrote: "Our State constitutions (I do not speak now of the national Constitution . . .), besides providing for the framework of government, the qualifications of electors, and the like, were made to be the guarantee and charter of a few simple, well-established, uncontroverted principles, lest in moments of passion or inadvertence, or under the temporary pressure of special interests, these should be disregarded. They were not made to be codes of laws, or to embody the opinion of a momentary majority upon an entirely unsettled question."

Judge Cooley, being called upon to address the constitutional convention that met at Bismarck in 1889, spoke as follows: "In your constitution-making, remember that times change, that men change, that new things are invented, new devices, new schemes, new plans, new uses of corporate power. And that is to go on hereafter for all time; and if the period should ever come which we speak of as the millennium, I still expect that the same thing will continue to go on there, and even in the millennium people will be studying ways whereby, by means of corporate power, they can circumvent their neighbors. Don't, in your constitution-making, legislate too much. In your constitution you are tying the hands of the people. Don't do that to any such extent as to prevent the Legislature hereafter from meeting all evils that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to the field of legislation to the Legislature of the future. You have got to trust somebody in the future, and it is right and proper that each department of government should be trusted to perform its legitimate function."

But these principles were disregarded in the constitutions before us. It would seem instead as if the theory underlying them were that the agents of the people, whether legislative, executive, or judicial, are not to be trusted; so that it is necessary to enter into the most minute particulars as to what they *shall not* do.

This naturally has given rise to the opinion we so often hear expressed, that there is an increasing distrust in this country of representative institutions, and that this is proved by the increasing passage of constitutional restrictions upon the power of the Legislature, by the prohibition of special legislation, by the adoption of biennial instead of annual sessions, and by the grant to municipalities of more complete local self-government, in derogation of the former powers of the Legislature over them. It has been said that making biennial the session of Legislatures is a movement backward in the march of free government. And Bryce,[1] commenting on an address delivered by Mr. Charles H. Butler in 1886, calls this a rather pitiful result for a self-governing democracy to have arrived at. But with all respect to such authority, there seem to be valid reasons for arriving at very opposite conclusions.

We hope that our criticisms will not be misunderstood, nor deemed inconsistent. A constitution should affirm general principles, leaving details to legislation. All four of these constitutions violate this rule, and are therefore faulty. With every change in development, education, and civilization, it will be found that modifications in detail — the proper subject for statutes — can only be made through amendments of the organic law. If such are constantly made, the constitution is cheapened and brought into disrespect; if they are not made, it galls and irritates.

But the general principle of the right to locate self-government has not hitherto been adequately acknowledged,— has been tacitly acted upon, but not expressly affirmed. The evil results of this want of recognition have finally borne fruit. Throughout the United States, the politicians in the Legislatures have more and more interfered in matters relating exclusively to subdivisions of the State,— often against the express desire of these subdivisions. It really becomes necessary, therefore, to provide in the constitutions that the Legislature shall confine itself to what concerns alike all the towns and cities of the State,— in other words, that it shall legislate by general act, reserving to the separate municipalities the control of their own affairs. We may confidently expect in future Constitutions affirmative recognition of this right to local self-government of each subdivision of the State (within the limits of its own sphere), free from control by the State except under the operation of general laws.

[1] American Commonwealth, i. 536.

Moreover, in general, we must take into consideration the steady increase of popular education that has been going on through the country since the Revolution. As education has become diffused, the difference between the mass of voters and the members of the Legislatures has diminished. Without formulating this result, the voters feel it, and hence the growth of the idea that the voters can govern themselves directly through their constitutions, rather than indirectly through their Legislatures. Bryce himself well points out[1] that because of this spread of education, and also for other reasons, the democracy of the present day is more energetic and pervasive than it was in our first generation. It is more practical, more disposed to extend the sphere of governmental interference, less content to rely on general principles. One discovers in the wording of the most recent constitutions a decline of that most touching faith in the efficacy of broad declarations of abstract human rights which marked the disciples of Jefferson. Equally pronounced, on the other hand, is the evidence of increasing faith in the efficacy of the essential principle of true democracy,— actual equality of rights. Along with the extension of this principle we see also the application of broader humanitarian principles, as well as the extension of doctrines savoring of socialism, the need of increased power in the State over the property and persons of the people, when necessary for the good of the greater number.

Looking broadly over the whole field from this point of view, we shall find that many of the provisions which at first seemed to be limitations upon the power of the Legislature are really but another means of increasing and equalizing the rights of all. Thus, provisions prohibiting the Legislature from passing special laws whenever general laws are applicable, are, after all, only checks upon the granting of monopolies and special privileges. The committal of the decision of purely local matters to the community directly interested, is more properly an extension of the principle of self-government than a restriction upon the Legislature. So the stringent provisions against granting special corporate powers are attempts to secure equal rights rather than mere restrictions upon legislative power. The substitution of biennial for annual sessions is a recognition by the people of the fact that too much legislation, like too much medicine, may impede, instead of promoting their welfare.

[1] In his vol. i. p. 439.

It was well said by Mr. Hitchcock, in his annual address to the American Bar Association in 1890, that such self-imposed restrictions are symptoms, not of the decay, but of the vigorous and healthful working of representative institutions, and are a part of the system of checks and balances characteristic of American institutions. No augury can be drawn therefrom of the decay of self-government, but rather of its perpetuity and strength. When the people of an American State deliberately impose limitations upon the exercise of their own power and that of their representatives, it is the stronger hand of a self-governing democracy which controls and guides; and such restrictions are, as James Russell Lowell has felicitously said, "but obstacles in the way of the people's whim, not of their will."

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